

**IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF
TENNESSEE**

**SIMON COLE, individually, and d/b/a
DAWN OF GAMES, and KARL TUCKER,
Individually, and on behalf of
KARL TUCKER PRODUCTIONS,
INC., and BENJAMIN PAUL
BISTLINE, individually, and on behalf
Of P&V CAPITAL RESOURCES, INC.,
And JUSTIN BOWMAN &
JOHN BARROSO,
Individually, and d/b/a JSB
INVESTMENTS, and JOHN
MCCORMACK, individually and
ALEXANDER LOZANO, individually
And on behalf of AES TRADING, INC.,
And DAVID K. CABAGE, individually,**

Docket #3:08CV1013

HON. WILLIAM J. HAYNES

Plaintiffs,

v.

**GREGORY M. SCHNEIDER,
AMANDA SCHNEIDER,
BRIAN C. COOK, individually and d/b/a
SHIPPING SOLUTIONS, INC.,
SHIPPING SOLUTIONS
FULFILLMENT, INC., d/b/a
REED FROG USA, d/b/a IDEA
FACTORY COMPANY, d/b/a
TZD.COM, d/b/a C4GAMESTORE.
COM. d/b/a HOTGAMESTUFF.COM
And BLUE SKY CAPITAL
MANAGEMENT CORPORATION,
d/b/a PLUGNPLAYFOREX.COM,**

Defendants.

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO ALTER AND/OR
AMEND THE COURT' S JUDGMENT**

The trial court erred in several respects. First, the court should not have trebled the damages under the Tennessee Consumer Protection Act (TCPA). In the Plaintiffs' amended complaint they sought no less than three times their compensatory damages. (doc. 30). The parties entered into a stipulation and the court entered an order wherein the plaintiffs gave up their claim for punitive damages. (doc. 84). Such a waiver included any punitive damage

award under the TCPA because Tennessee Supreme Court holds that trebling damages under the TCPA is a punitive in nature. *Miller v. United Automax*, 166 S.W.3d 692, 697 (Tenn. 2005); *See also Concrete Spaces Inc. v. Sender*, 2 S.W.3d 901, 907 (Tenn. 1999). Secondly, since the Jury found that there was a securities act violation, the Defendants believe that the court should have enforced only the remedies available under that act and not the TCPA.

Third, the court should not have ordered a permanent injunction under the TCPA as there was not sufficient evidence to support a finding by the jury that the Defendants committed fraud and that the public needed protection on a permanent basis. The defendants develop this argument in their Memorandum in support of their request for a new trial.

Fourth, the court erred in making the individual defendants joint and severally liable. There was not sufficient proof to justify such a ruling as argued in defendants' other memorandum in support of their request for a new trial.

Respectfully Submitted,

/s/Mark T. Freeman

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent by way of the electronic filing system on April 27, 2010 to:

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